

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**JEFFERSON COUNTY COMMISSION;
PATRICIA NOLAND, *as an individual
and behalf of all others similarly situated*;
and DALE MANUEL, *as an individual and
behalf of all others similarly situated*,**

Plaintiffs, and

THORNTON COOPER,

Intervening Plaintiff,

v.

**Civil Action No. 2:11-CV-989
(KING, BAILEY, BERGER)**

**NATALIE E. TENNANT, *in her capacity as
the Secretary of State*; EARL RAY TOMBLIN,
*in his capacity as the Chief Executive Officer
of the State of West Virginia*; JEFFREY
KESSLER, *in his capacity as the Acting
President of the Senate of the West Virginia
Legislature*; and RICHARD THOMPSON, *in
his capacity as the Speaker of the House of
Delegates of the West Virginia Legislature*,**

Defendants.

**JOINT STIPULATION AMONG JEFFERSON COUNTY COMMISSION, PATRICIA
NOLAND, DALE MANUEL, THORNTON COOPER, JEFFREY KESSLER, AND
RICHARD THOMPSON.**

The **Jefferson County Commission, Patricia Noland, and Dale Manuel**, Plaintiffs, by
their Counsel, **Thornton Cooper**, Intervening Plaintiff, *pro se*, **Jeffrey Kessler**, Defendant, by

his Counsel, and **Richard Thompson**, Defendant, by his Counsel, hereby submit this Joint Stipulation to this Honorable Court, as follows:

1. The first named Plaintiff is the County Commission of Jefferson County, West Virginia (commonly known as the Jefferson County Commission), organized under the laws of the State of West Virginia, with its principal place of business at 124 East Washington Street, Charles Town, WV 25414.

2. Plaintiff Patricia Noland is a citizen and resident of Jefferson County, West Virginia. She is an elected official serving as a Jefferson County Commissioner.

3. Plaintiff Dale Manuel is a citizen and resident of Jefferson County, West Virginia. He is an elected official serving as a Jefferson County Commissioner.

4. Intervening Plaintiff Thornton Cooper is a native, citizen, and resident of Kanawha County, West Virginia, and is also an attorney and political cartographer. He actively participated and testified in federal cases involving the redistricting of West Virginia's congressional districts following the 1980 and 1990 Censuses. He was qualified as an expert in the latter case, *Stone v. Hechler*, 782 F. Supp. 1116, 1122, 1123 (N. D. W. Va. 1992). He was also a candidate for Congress in the 2008 Democratic primary in West Virginia's Second Congressional District, as it was then constituted.

5. The first Defendant, the **Honorable Natalie E. Tennant**, is the Secretary of State of the State of West Virginia, and serves as the chief election official of West Virginia.

6. The remaining Defendants, the **Honorable Earl Ray Tomblin**, the Honorable Jeffrey Kessler, and the Honorable Richard Thompson, are, respectively, the Governor of the State of West Virginia, the President of the West Virginia State Senate, and the Speaker of the West Virginia House of Delegates.

7. The populations of the West Virginia's fifty-five (55) counties under the 2010

Census and the areas of those counties (rounded to the nearest square mile) are as follows:

<u>County</u>	<u>2010 Population</u>	<u>Area(square miles)</u>
Barbour	16,589	343
Berkeley	104,169	322
Boone	24,629	503
Braxton	14,523	517
Brooke	24,069	93
Cabell	96,319	288
Calhoun	7,627	280
Clay	9,386	346
Doddridge	8,202	321
Fayette	46,039	669
Gilmer	8,693	340
Grant	11,937	480
Greenbrier	35,480	1,025
Hampshire	23,964	645
Hancock	30,676	88
Hardy	14,025	585
Harrison	69,099	417
Jackson	29,211	471
Jefferson	53,498	212
Kanawha	193,063	908
Lewis	16,372	390
Lincoln	21,720	439
Logan	36,743	456
McDowell	22,113	535
Marion	56,418	312
Marshall	33,107	312
Mason	27,324	445
Mercer	62,264	421
Mineral	28,212	329
Mingo	26,839	424
Monongalia	96,189	366
Monroe	13,502	474
Morgan	17,541	230
Nicholas	26,233	654
Ohio	44,443	109
Pendleton	7,695	698
Pleasants	7,605	135
Pocahontas	8,719	942
Preston	33,520	651
Putnam	55,486	350

Raleigh	78,859	609
Randolph	29,405	1,040
Ritchie	10,449	454
Roane	14,926	484
Summers	13,927	368
Taylor	16,895	176
Tucker	7,141	421
Tyler	9,208	261
Upshur	24,254	355
Wayne	42,481	512
Webster	9,154	556
Wetzel	16,583	361
Wirt	5,717	235
Wood	86,956	377
Wyoming	23,796	502
Total	1,852,994	24,231

8. Following the 2010 Census, West Virginia, with a population of 1,852,994, was assigned a total of three (3) members of Congress in accordance with *Article I, §2, clause 3*, of the *United States Constitution* and with the *Fourteenth Amendment* thereto, and pursuant to 2 *U.S.C. § 2a(a)*, under a rather complicated algebraic formula known as the “method of equal proportions”. *See, U. S. Dep’t of Commerce v. Montana*, 503 U.S. 442, 112 S. Ct. 1415, 118 L. Ed. 2d 87 (1992).

9. Under the 2001 redistricting statute, West Virginia, as of the beginning of 2011, was divided as follows: (a) The First Congressional District, with a 2010 population of 615,991, consisted of Barbour, Brooke, Doddridge, Gilmer, Grant, Hancock, Harrison, Marion, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, and Wood Counties. (b) The Second Congressional District, with a population of 648,186, consisted of Berkeley, Braxton, Calhoun, Clay, Hampshire, Hardy, Jackson, Jefferson, Kanawha, Lewis, Mason, Morgan, Pendleton, Putnam, Randolph, Roane, Upshur, and Wirt Counties. (c)

The Third Congressional District, with a population of 588,817, consisted of Boone, Cabell, Fayette, Greenbrier, Lincoln, Logan, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Wayne, Webster, and Wyoming Counties.

10. Early in 2011, after the Census Bureau released the 2010 population figures for each of West Virginia counties, Mr. Cooper, using a calculator, pen, and paper, began analyzing those population figures and began grouping counties together to form possible congressional districts and possible state legislative districts.

11. Under the 2010 Census results, the ideal population for a West Virginia congressional district, to the nearest integer, is 617,665. The congressional redistricting plan that would be closest to numerical equality among districts would result in one congressional district with a population of 617,664 and two congressional districts with a population of 617,665 each. $617,664 + 617,665 + 617,665 = 1,852,994$.

12. On March 29, 2011, Mr. Cooper telephoned one of his legislative representatives, State Senator Brooks McCabe, and requested that Senator McCabe informally sponsor Mr. Cooper's various redistricting plans so that those plans could be analyzed by the West Virginia Redistricting Office, which is located in the basement of the State Capitol Building. This sponsorship would be for the purpose of discussion only. State Senator Brooks McCabe agreed to have the Legislature's redistricting office analyze Mr. Cooper's congressional redistricting plans for the purpose of discussion.

13. The West Virginia Redistricting Office, with the authority of the West Virginia Legislature, uses a software application called "Maptitude for Redistricting". This software application is routinely used by many state governments and political parties. It allows a user

to, among other things, create and organize redistricting plans and compute quantitative measures of compactness.

14. In April 2011, the West Virginia State Senate Redistricting Committee (with its staff, and prior to August 2011, also known as the State Senate Redistricting Task Force) SSRC, chaired by State Senator John Unger, II, announced that it would begin holding public hearings across the state to obtain public comment on redistricting congressional districts, State Senate districts, and House of Delegates districts.

15. On May 2, 2011, Mr. Cooper attended the first of these public hearings, which was held in Martinsburg. During May, June, and July of 2011, twelve (12) hearings by that committee were held across the state. Citizens at this first meeting expressed dissatisfaction with the geography of the 2nd Congressional district.

16. On May 4, 2011, Mr. Cooper sent an e-mail to Senator McCabe which set forth in detail three (3) separate congressional redistricting plans. Senator McCabe then e-mailed those plans to the West Virginia Redistricting Office, which analyzed them. After completing that analysis, that office then submitted the plans, with analysis, back to Senator McCabe. In turn, Senator McCabe e-mailed those plans, with analysis, back to Mr. Cooper, so that the latter could then submit them as citizen submissions at the SSRC hearings.

17. Mr. Cooper attended all twelve (12) of the SSRC hearings, the last of which was held on Thursday, July 21, 2011, in Princeton. At those hearings, he submitted those three (3) different plans to the SSRC and made oral presentations about his various proposals. Those submissions (and all of his oral presentations to that committee) are set forth in detail, and are mapped out, on the West Virginia State Senate's website. At those hearings, Mr. Cooper urged

that the Legislature create congressional districts and legislative districts that would be equal in population as nearly as practicable.

18. Also attending a number of those SSRC hearings was Aaron Allred, the Legislative Auditor and Legislative Manager for the Joint Committee on Government and Finance of the West Virginia Legislature.

19. Of all the plans that were submitted to the SSRC during these public hearings, Mr. Cooper's three (3) submissions to that committee are the plans closest to numerical equality that divide no counties between or among congressional districts.

20. Under the first of Mr. Cooper's congressional redistricting plans, which was identified by the redistricting office as "Congressional Plan 1 McCabe and Cooper", the populations of the three congressional districts are 617,341, 617,869, and 617,784. A copy of that Plan, including population and deviation figures and a color map of the districts, was attached to Intervening Plaintiff Cooper's Complaint as Attachment A. That plan will be referred to as Cooper Plan No. 1.

21. Under Cooper Plan No. 1, West Virginia would be divided as follows: (a) The First Congressional District, with a 2010 population of 617,341, would consist of Brooke, Cabell, Calhoun, Clay, Gilmer, Hancock, Jackson, Lewis, Marshall, Mason, Monongalia, Ohio, Pleasants, Ritchie, Roane, Tyler, Wayne, Wetzel, Wirt, and Wood Counties. (b) The Second Congressional District, with a population of 617,869, would consist of Barbour, Berkeley, Braxton, Doddridge, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jefferson, Marion, Mineral, Monroe, Morgan, Pendleton, Pocahontas, Preston, Randolph, Summers, Taylor, Tucker, Upshur, and Webster Counties. (c) The Third Congressional District, with a population of

617,784, would consist of Boone, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Putnam, Raleigh, and Wyoming Counties.

22. Under the second of Mr. Cooper's congressional redistricting plans, which was identified by the redistricting office as "Congressional Plan 2 McCabe and Cooper", the populations of the three congressional districts are 617,778, 617,432, and 617,784. A copy of that Plan, including population and deviation figures and a color map of the districts, was attached to Intervening Plaintiff Cooper's Complaint as Attachment B. That plan will be referred to as Cooper Plan No. 2.

23. Under Cooper Plan No. 2, West Virginia would be divided as follows: (a) The First Congressional District, with a 2010 population of 617,778, would consist of Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Jefferson, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Tucker, Tyler, and Wetzel Counties. (b) The Second Congressional District, with a population of 617,432, would consist of Braxton, Cabell, Calhoun, Clay, Gilmer, Greenbrier, Harrison, Jackson, Lewis, Marion, Mason, Monroe, Pocahontas, Ritchie, Roane, Summers, Taylor, Upshur, Wayne, Webster, Wirt, and Wood Counties. (c) The Third Congressional District, with a population of 617,784, would consist of Boone, Fayette, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Nicholas, Putnam, Raleigh, and Wyoming Counties.

24. Under the third of Mr. Cooper's congressional redistricting plans, which was identified by the redistricting office as "Congressional Plan 3 McCabe and Cooper", the populations of the three congressional districts are 617,778, 617,667, and 617,549. A copy of that Plan, including population and deviation figures and a color map of the districts, was

attached to Intervening Plaintiff Cooper's Complaint as Attachment C. That plan will be referred to as Cooper Plan No. 3.

25. Under Cooper Plan No. 3, West Virginia would be divided as follows: (a) The First Congressional District, with a 2010 population of 617,778, would consist of Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Jefferson, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Tucker, Tyler, and Wetzel Counties. (b) The Second Congressional District, with a population of 617,667, would consist of Boone, Cabell, Clay, Jackson, Kanawha, Lincoln, Mason, Putnam, Ritchie, Roane, Wayne, Wirt, and Wood Counties. (c) The Third Congressional District, with a population of 617,549, would consist of Braxton, Calhoun, Fayette, Gilmer, Greenbrier, Harrison, Lewis, Logan, Marion, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Taylor, Upshur, Webster, and Wyoming Counties.

26. Following the conclusion of these hearings by the SSRC, the First Extraordinary Session of the 2011 Legislature was convened in Charleston in early August 2011. At one SSRC meeting, Senator Unger unveiled a redistricting plan that, he said, would have divided West Virginia into three congressional districts with populations of 617,664, 617,665, and 617,665.

27. The United States Constitution, Article I, Section 2, neither requires nor prohibits the splitting of counties between or among congressional districts. The West Virginia Constitution, Article 1, Section 4, requires congressional districts to be formed of contiguous counties. Nationwide, of the states with more than one congressional district only two in the congressional redistricting resulting from the 2010 census did not split counties: West Virginia and Iowa.

28. At another meeting, on August 4, 2011, after a number of proposals were considered, the SSRC reported out a bill that would amend the congressional-districts language in *W.Va. Code §1-2-3*, as last amended in 2001, by moving Mason County from the Second Congressional District to the Third Congressional District. That was the only change that that bill made to the then current congressional districts.

29. That bill, Senate Bill No. 1008 as amended, passed the State Senate and the House of Delegates on Friday, August 5, 2011. Defendants Jeffrey Kessler and Richard Thompson voted for that bill. That bill took effect from passage and was subsequently signed by Defendant, and then Acting Governor, Earl Ray Tomblin on August 18, 2011.

30. The population variances among congressional districts under Enrolled Senate Bill No. 1008 (.79 % and an overall range of 4,871) are much greater than the population variances under any of Cooper Plans Nos. 1, 2, and 3 and are higher than the population variances in the 1991 legislation that was allowed to stand in *Stone v. Hechler, supra*, which was .09 percent (with an overall range of 556 people).

31. Under Enrolled Senate Bill No. 1008, West Virginia is divided as follows: (a) The First Congressional District, with a population of 615,991, consists of Barbour, Brooke, Doddridge, Gilmer, Grant, Hancock, Harrison, Marion, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, and Wood Counties. (b) The Second Congressional District, with a population of 620,862, consists of Berkeley, Braxton, Calhoun, Clay, Hampshire, Hardy, Jackson, Jefferson, Kanawha, Lewis, Morgan, Pendleton, Putnam, Randolph, Roane, Upshur, and Wirt Counties. (c) The Third Congressional District, with a population of 616,141, consists of Boone, Cabell, Fayette, Greenbrier, Lincoln, Logan, Mason,

McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Wayne, Webster, and Wyoming Counties.

32. The new Second Congressional District, in which Plaintiff Jefferson County Commission is located, and in which Plaintiffs Patricia Noland and Dale Manuel and Intervening Plaintiff Thornton Cooper reside, is the most populous of these districts, exceeding the population of the old and new First Congressional District by 4,871 people.

33. The Legislatures of other states with more than one congressional district have succeeded in drawing congressional districts that are equal, or nearly so.¹ A partial list of those states includes: Alabama (1 person); California (2 people); Illinois (exact); Indiana (1 person); Iowa (76 people); Louisiana (162 people); Maine (1 person); Minnesota (1 person); Missouri (1 person); Nebraska (1 person); Nevada (1 person); North Carolina (1 person); Oklahoma (1 person); Oregon (1 person); Texas (1 person);² Utah (1 person); Wisconsin (1 person).

34. In early December 2011, Mr. Cooper developed a fourth congressional redistricting plan. That plan will be referred to as Cooper Plan No. 4. On Saturday, December 17, 2011, Mr. Cooper filed Cooper Plan No. 4 with the Court. That plan divides one county, Taylor County, between the First and Third Congressional Districts. Under that plan, six (6) Taylor County precincts -- Taylor County Voting Districts 3 (with a population of 1,108), 9 (with a population of 538), 10 (with a population of 1,411), 11 (with a population of 266), 12

¹ If the Census total for a given state is an odd number of people, states with more than one congressional district will necessarily have a variance of at least one person.

² The Texas redistricting plan is being reviewed by the United States Supreme Court for reasons unrelated to the number of people in each district. There are pending challenges to several of the states' plans listed here but these challenges are on grounds other than the number of people in each district. *See e.g.*, Illinois <http://ilsenateredistricting.com/phocadownload/releases/SB1178-CongressionalComparison.pdf>.

(with a population of 956), and 14 (with a population of 1,079) – with a total population of 5,358, are placed in the First Congressional District. Under that plan, the other twelve (12) Taylor County precincts -- Taylor County Voting Districts 1 (with a population of 2,214), 2 (with a population of 1,202), 4 (with a population of 968), 6 (with a population of 427), 17 (with a population of 1,084), 19 (with a population of 1,201), 23 (with a population of 570), 25 (with a population of 726), 26 (with a population of 502), 29 (with a population of 314), 31 (with a population of 1,051), and 36 (with a population of 1,278) – with a total population of 11,537, are placed in the Third Congressional District. Filed with that plan are maps and population figures.

35. Under Cooper Plan No. 4, West Virginia would be divided as follows: (a) The First Congressional District, with a 2010 population of 617,663, would consist of all of Berkeley, Brooke, Grant, Hampshire, Hancock, Hardy, Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants, Preston, Tucker, Tyler, and Wetzel Counties and of part of Taylor County. (b) The Second Congressional District, with a population of 617,667, would consist of all of Boone, Cabell, Clay, Jackson, Kanawha, Lincoln, Mason, Putnam, Ritchie, Roane, Wayne, Wirt, and Wood Counties. (c) The Third Congressional District, with a population of 617,664, would consist of all of Barbour, Braxton, Calhoun, Doddridge, Fayette, Gilmer, Greenbrier, Harrison, Lewis, Logan, McDowell, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Raleigh, Randolph, Summers, Upshur, Webster, and Wyoming Counties and of part of Taylor County.

36. Under Article I, § 4, of the *West Virginia Constitution*, for “the election of representatives to Congress, the State shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties, and be compact. Each district shall contain as nearly as may be, an equal

number of population, to be determined according to the rule prescribed in the Constitution of the United States."

37. Since West Virginia's founding on June 20, 1863 until the congressional redistricting plan adopted in 1991, the residents of Jefferson County have not been in the same congressional district as the residents of Kanawha County.

38. Although congressional district lines may not cross state boundaries, the driving distances from Charles Town, West Virginia to the capital cities of Pennsylvania, Maryland, Delaware, New Jersey, and Virginia are less than the driving distance from Charles Town to Charleston, West Virginia. Indeed, the driving distance to New York City from Charles Town, WV is shorter than the driving distance from Charles Town to Charleston, West Virginia.

42. Earl Ray Tomblin is Governor of West Virginia.

43. Jeffrey Kessler is President of the West Virginia Senate.

44. Richard Thompson is Speaker of the West Virginia House of Delegates.

45. Jurisdiction is proper in the United States District Court for the Southern District of West Virginia.

46. Venue is proper in the United States District Court for the Southern District of West Virginia.

47. The West Virginia Legislature had the task of reapportioning Congressional Districts based upon the 2010 U.S. Census.

48. Based on the United States Census, West Virginia has a total population of 1,852,994 and was given three seats in the U.S. House of Representatives.

49. The West Virginia State Senate created a Redistricting Task Force which solicited public input on redistricting at twelve public hearings around the state.

50. Both the House and Senate place redistricting information on dedicated websites in order to provide information to the public and solicit public comment. These websites are located online at <http://www.legis.state.wv.us/House/redistricting.cfm> and <http://www.legis.state.wv.us/Senate1/redistricting.cfm>.

51. Members elected to the West Virginia Legislature must take the following oath prescribed by Article VI, Section 16 of the State Constitution:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and faithfully discharge the duties of Senator (or Delegate) according to the best of my ability"; and they shall also take this further oath, to wit: "I will not accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company, or person for any vote or influence I may give or withhold, as Senator (or Delegate) on any bill, resolution or appropriation, or for any act I may do or perform as Senator (or Delegate)."

52. The ideal population number for a West Virginia congressional district following the 2010 U.S. Census is 617,665 persons.

53. West Virginia's First Congressional District is currently represented by Representative David McKinnley, a Republican who resides in Wheeling, West Virginia.

54. West Virginia's Second Congressional District is currently represented by Representative Shelley Moore Capito, a Republican who resides in Charleston, West Virginia.

55. West Virginia's Third Congressional District is currently represented by Representative Nick Rahall, a Democrat who resides in Beckley, West Virginia.

56. Article I Section 4 of the West Virginia Constitution states:

For the election of representatives to Congress, the state shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which

districts shall be formed of contiguous counties, and be compact. Each district shall contain, as nearly as may be, an equal number of population, to be determined according to the rule prescribed in the constitution of the United States.

57. The West Virginia Legislature established a permanent redistricting office in 1991. This office uses Maptitude Redistricting software and U.S. Census figures in order to provide the Legislature with information related to the population and quantitative compactness of congressional districts.

58. Two seminars were conducted for members of the West Virginia Legislature by the National Conference of State Legislatures.

59. Professor Bastress testified before the Senate Select Committee on Redistricting at the August 4, 2011 hearing during which the congressional redistricting plan was adopted.

60. The Senate Select Committee on Redistricting ("Committee") held a meeting on Congressional Redistricting on August 4, 2011. At this meeting, Senators considered five congressional redistricting proposals.

61. The Committee first considered an Amendment by Senator Prezioso at the August 4, 2011 meeting. The parties stipulate that the components of Senator Prezioso's amendment are accurately set forth in attached Exhibit A. Prezioso Amendment No. 1 was defeated by voice vote and no recorded vote was taken.

62. The Committee considered a second Amendment by Senator Prezioso at the August 4, 2011 meeting. The parties stipulate that the components of Senator Prezioso's amendment are accurately set forth in attached Exhibit B. Prezioso Amendment No. 2 was defeated by voice vote and no recorded vote was taken.

63. The Committee considered an Amendment by Senator Facemire at the August 4, 2011 meeting. The parties stipulate that the components of Senator Facemire's amendment are

accurately set forth in attached Exhibit C. The Facemire Amendment was defeated by voice vote and no recorded vote was taken.

64. The Committee considered an Amendment by Senator Barnes at the August 4, 2011 meeting. The parties stipulate that the components of Senator Barnes' amendment are accurately set forth in attached Exhibit D. The Barnes Amendment was adopted by voice vote and no recorded vote was taken.

65. The Committee then reported the bill as amended, to the Senate floor with a recommendation that the bill pass.

66. The Senate considered S.B. 1008 on the Floor on August 5, 2011.

67. The Senate considered an amendment on the Floor offered by Senator Snyder. The parties stipulate that the components of Senator Snyder's amendment are accurately set forth in attached Exhibit E.

68. The Snyder amendment was defeated on the Senate Floor by a vote of 14 to 17.

69. S.B. 1008 was adopted by a vote of 27 to 4 in the Senate.

70. S.B. 1008 was approved, with a technical amendment, in the West Virginia House of Delegates by a vote of 90 to 5.

71. After passing the House with a technical amendment, S.B. 1008 returned to the Senate. The Senate passed the amended bill by a vote of 27 to 1.

72. Two members of the Senate did not vote on any matters during the extraordinary session that began August 1, 2011. As Senate President, Senator Earl Ray Tomblin was acting as Governor, and did not participate in votes in the Senate; and Senator Eric Wells was serving with the armed forces in Afghanistan.

73. S.B. 1008 made no changes to the geographical boundaries of the First Congressional District.

74. Pursuant to Rule 20 of the Joint Rules of the West Virginia Legislature, the following items are required to be published in the Journal of each house:

“(a) Messages from the Governor and messages from the other house, the titles of all bills and the title and text of all resolutions.

(b) A record of all votes taken by yeas and nays as required by the Constitution, the rules of the respective houses and these rules; and a brief statement of the contents of each petition, memorial, or paper presented to each house.

(c) A true and accurate account of the proceedings of each house.”

Historic Information

75. Following the 1970 U.S. Census, the number of seats allocated to West Virginia in the House of Representatives was reduced from five to four.

76. In 1971, the West Virginia Legislature adopted a Redistricting Plan which apportioned congressional districts as follows:

a. First District: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Harrison, Doddridge, Tyler, Pleasants, Wood. Total Population: 436,337

b. Second District: Jefferson, Berkeley, Morgan, Hampshire, Mineral, Grant, Hardy, Tucker, Preston, Monongalia, Taylor, Barbour, Pendleton, Randolph, Upshur, Lewis, Pocahontas, Webster, Greenbrier, Monroe, Summers, Fayette. Total Population: 436,140

c. Third District: Ritchie, Wirt, Gilmer, Calhoun, Mason, Jackson, Roane, Braxton, Putnam, Clay, Kanawha, Nicholas, Lincoln, Boone. Total Population: 434,165

d. Fourth District: Cabell, Wayne, Mingo, Logan, Wyoming, McDowell, Raleigh, Mercer. Total Population: 437,595

77. The 1971 reapportionment was challenged in the United States District Court for the Southern District of West Virginia in *West Virginia Civil Liberties Union v. Rockefeller*, 336 F. Supp. 395 (S. D. W. Va. 1972).

78. The variance of the population of the congressional districts following the 1971 redistricting was as follows:

District	Population	Variance from "ideal"	Percent of variance
First	436,337	+278	+0.06
Second	436,140	+81	+0.02
Third	434,165	-1894	-0.43
Fourth	437,595	+1536	+0.35

79. The relative overall range of the variance between congressional districts in 1971 was .78.

80. According to the attached figures released by the West Virginia Secretary of State, there were 1,216,364 registered voters in the State of West Virginia as of October 2011.

81. Under the redistricting plan adopted by the Legislature as S.B. 1008, 401,524 registered voters reside in the First Congressional District, 401,392 registered voters reside in the Second Congressional District, and 413,448 registered voters reside in the Third Congressional District.

82. The parties stipulate to the accuracy and admissibility of the Plan Components and Measures of Compactness for Cooper Plans 1 through 4, attached as Exhibits F, G, H, and I.

The parties stipulate that Mr. Cooper presented plans 1 through 3 to the Senate Redistricting Task Force. Cooper Plan 4 was prepared during the course of this litigation and shared with all parties and the Court on December 17, 2011.

Plaintiffs Jefferson County Commission, Patsy Noland, and Dale Manuel intend to offer lay and expert testimony.

At the evidentiary hearing, Mr. Cooper desires to offer testimony and evidence on the issue of compactness unless the parties decide to stipulate how each of the congressional districts under each of his four plans, how each of the congressional districts under the plan passed by the Legislature, and how each of the congressional districts under the plan unveiled by Senator Unger and under any other plans offered by the original Plaintiffs in this case score under various compactness tests.

Defendants Kessler and Thompson to offer lay and expert testimony as set forth in their previously-filed witness statement.

**JEFFERSON COUNTY COMMISSION;
PATRICIA NOLAND, DALE MANUEL,
By Counsel**

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as the Speaker of the West Virginia House
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JEFFERSON COUNTY COMMISSION,
PATRICIA NOLAND, et al.,

Plaintiffs,

v.

Civil Action No. 2:11-cv-00989
(Honorable King, Bailey, Berger)

NATALIE E. TENNANT, et al.,

Defendants.

CERTIFICATE OF SERVICE

I, Anthony J. Majestro, do hereby certify that on December 23, 2011, I electronically filed **JOINT STIPULATION AMONG JEFFERSON COUNTY COMMISSION, PATRICIA NOLAND, DALE MANUEL, THORNTON COOPER, JEFFREY KESSLER, AND RICHARD THOMPSON** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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